

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

David Johnson,)	CASE NO. 5:14 CV 1413
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Michele Miller, Warden)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

Introduction

This matter is before the Court upon the Report and Recommendation of Magistrate Judge McHargh (Doc. 10) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court. Petitioner did not file objections to the recommendation. For the following reasons, the Report and Recommendation is ACCEPTED.

Standard of Review

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any

proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Discussion

Petitioner is incarcerated as a result of his conviction for felonious assault in the Stark County Court of Common Pleas arising out of his role in the severe beating of Ralph Davison. The Magistrate Judge determined that the respondent’s motion to dismiss the habeas petition on timeliness grounds should be granted. This Court agrees.

The AEDPA requires a petition to be filed within one year after the state conviction becomes final. Petitioner’s conviction became final on February 27, 2013 after he did not seek certiorari within the 90 day period following the state supreme court’s denial of his leave to appeal. Thus, petitioner had until February 27, 2014 to file his petition. The petition, however, was not filed until June 27, 2014. It is, therefore, untimely.

Having no objections, the Court has reviewed the Report and Recommendation and found no clear error. Accordingly, it accepts the recommendation.

Conclusion

For the reasons set forth herein and for the reasons set forth in the Magistrate Judge’s Report and Recommendation, which is incorporated herein, the Petition for Writ of Habeas Corpus is denied as untimely. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R.App.P.

22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN

United States District Judge

Dated: 4/27/15